

Merritt, Allen

From: Luke, Tim
Sent: Tuesday, January 23, 2007 12:22 PM
To: Water District 37 (Kevin Lakey) (E-mail)
Cc: Merritt, Allen; Jones, Doug; Baxter, Garrick
Subject: FW: Interim Admin for Basin 37 sw

Kevin,

I am forwarding a message from our lead Deputy Attorney General for the SRBA. This is pretty consistent with what we discussed yesterday. We can request interim administration from the court now but we need to justify it. I would need your help and support of the water district in justification if we decide to pursue this. I guess I'm reluctant to push forward but I'm willing to do so if you and the district feel it is important. I've asked the DAG to give me some expectation as to when most of the rights will be partially decreed in this area. I assume most rights can be partially decreed by 2008 irrigation season but I'm not certain given the number of Director's reports that were filed over the last two months.

If we don't push forward on interim admin now, then your letter should be revised to inform the users that those rights will not be delivered out of priority if they are decreed as recommended by IDWR, but you are holding off on regulation until the rights are partially decreed or unless interim admin is granted by the courts using the Director's reports as basis for delivery, or unless further instructed by either IDWR or the SRBA court.

Tim

-----Original Message-----

From: Baxter, Garrick
Sent: Tuesday, January 23, 2007 8:21 AM
To: Luke, Tim
Cc: Shaff, Don; Merritt, Allen; Jones, Doug; Fritschle, Carter; Spackman, Gary; Tuthill, Dave
Subject: RE: Interim Admin for Basin 37 sw

Tim,

I believe that the Department's decision not to seek interim administration in the remaining basins was based upon the court's apparent reluctance to grant interim administration. It is my understanding that the court's concern was that if the Department started administering based upon director's reports that were objected to, this would only create a greater legal morass as people try to sue the Department over how the water is being administered. I think the Court would prefer that the issues get raised and resolved in the normal SRBA process. That said, if the Department can articulate specific reasons why it is important that a particular area needs to have interim administration, I believe the court might be willing to grant interim administration.

So in conclusion - I believe that the Department may seek interim administration in Basin 37 above Magic Reservoir if this is what the Department would like to do. However, please be prepared to provide the court with specific reasons why it is important that the Department be able to begin administration now in this area. Also, please realize that if there are lots of objection to the rights above Magic Reservoir or if the folks above Magic Reservoir object, the Court might not grant interim administration. With this in mind, let me know if the Department believes that the conditions in Basin 37 above Magic Reservoir warrant the Department seeking interim administration. If you do want to move forward, I will discuss with Clive and David Barber and get the ball rolling.

Thanks,
Garrick

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
Phone: (208) 287-4811
Fax: (208) 287-6700

-----Original Message-----

From: Luke, Tim

Sent: Monday, January 22, 2007 3:30 PM
To: Baxter, Garrick
Cc: Shaff, Don; Merritt, Allen; Jones, Doug; Fritschle, Carter; Spackman, Gary; Tuthill, Dave
Subject: Interim Admin for Basin 37 sw

Garrick,

After our discussion today I did talk to the WD37 watermaster and he does support seeking interim administration for at least the water rights in Basin 37 sw above Magic Reservoir. There are a number of situations and water rights for which delivery has been a question in the past and interim admin would provide him with more certainty or clearer direction this year. He seemed a little uncertain about requesting it for the entire basin although I believe we already have interim admin for sw overlying the ESPA (essentially below Magic Res).

I understand that the State decided not to seek interim admin of rights in existing water districts but I think there may be some additional justification for it in Basin 37. It does seem to have relatively more difficult or nebulous rights and situations. I agree that the area would benefit from having an interim admin order sooner rather than later unless we can expect a majority of the rights to be decreed soon but the rights the watermaster is most concerned about may be subject to objections and litigation for some time. There are also a number of unclaimed rights and/or rights that were split where I suspect his list of rights may not match up well with those from the director's report - again he would be better off starting with a clean slate sooner rather than later.

How do we proceed to determine if the State wants to pursue this - do you want to talk to Clive first?

Tim Luke